Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1975

No. 75-268

HYMAN RADZANOWER,

Petitioner,

vs.

TOUCHE, ROSS & CO., TELEPROMPTER CORPORATION, JACK K. COOKE, RAYMOND P. SHAFER, W.J. BRESNAN, H.J. SCHAFLY, LEONARD TOW, R.C. TODD, JR., B.P. SIMON, J.B. GREEN, L.H. READ, R.G. WILSON, H.E. FLAHERTY, B.D. FISCHMAN, BERLE ADAMS, MARVIN CARTON, R.F. LEWIS, P.L. LOWE, CHARLES LUCKMAN, M.B. MITCHELL, A.E. PUCKETT, J.H. RICHARDSON, M.E. LIVINGSTON, JACK WRATHER, and FIRST NATIONAL BANK OF BOSTON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Hyman Radzanower, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered May 23, 1975 affirming judgment of the District Court for the Southern District of New York entered October 21, 1974.

JUDGMENTS BELOW

The judgment of the District Court is not reported. It is set forth in Appendix A page 1a. The judgment of the Court of Appeals is not reported; it is set forth in Appendix B page 3a.

JURISDICTION

Defendant-respondent, First National Bank of Boston (hereinafter "Bank"), was named as a defendant in this class action upon the ground that it conducted banking business in the State of New York and was involved with defendant Teleprompter and other defendants in acts violative of the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) ("Exchange Act"), the New York Statute ("Martin Act") and common law.

Jurisdiction in the District Court is grounded on §27 of the Exchange Act and pendent jurisdiction.

Defendant, Boston Bank, moved on October 21, 1974 to dismiss under Rules 12(b)(2) and (3) Fed. R. Civ. P. for improper venue, contending that Massachusetts was the proper venue. The District Court granted the motion. No challenge was made to sufficiency of allegations of the complaint.

Plaintiff appealed to the Court of Appeals grounding jurisdiction on 28 U.S.C. §1291 and §1294. It affirmed without opinion on May 23, 1975 (Appendix B page 4a).

The jurisdiction of this Court is based on 28 U.S.C. §1254(1).

QUESTION PRESENTED

Should not this Court resolve once and for all a serious conflict among the Circuits, by declaring that the more liberal venue provisions of the Securities Act of 1933, 15 U.S.C. §77(a) ("Securities Act") and the Exchange Act, prevail over those of the stringent National Bank Act of 1864, 12 U.S.C. §94 ("National Bank Act")?

STATUTORY PROVISIONS INVOLVED

1. The venue provision of the National Bank Act (12 U.S.C. §94) provides:

> "Actions and proceedings against any association under this Chapter may be had in any district or territorial court of the United States held within the district in which such association may be established, or in any state, county, or municipal court in the county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

2. The general venue provisions of 28 U.S.C. §1391 provide in pertinent part:

> "(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district wherein all defendants reside, except as otherwise provided by law.

(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or in doing business, and such judicial district shall be regarded as the residence of such corporation for venue provisions."

3. The Securities Act (15 U.S.C. §77n(a)) states:

"(a) The district courts of the United States courts, and the United States courts of any territory, shall have juridiction of offenses and violations under this sub-chapter and under the rules and regulations promulgated by the commission in respect thereto, and concurrent with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this sub-chapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which defendant is an inhabitant or wherever the defendant may be found."

4. The Exchange Act (15 U.S.C. §78aa) provides:

"The district courts of the United States, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction over violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant . . . ."

5. The Banking Law of New York (Art. 3 §131, subd. 3) provides that a non-New York Bank, as therein specified:

". . . may act as trustee, guardian, executor, administrator, or in any other fiduciary capacity under and last will and testament or codicil thereto or other testamentary writing or under any deed of trust inter vivos or other written instrument establishing a trust, or by the

appointment of any court of said state, may act in this state in any such fiduciary capacity, provided similar domestic corporations which have the power under the law of this state to act herein in any such fiduciary capacity, are permitted to act in like fiduciary capacity in the state where such foreign corporation has its domicile, provided that if such foreign corporation proposes to act in any fiduciary capacity in this state and to do is required to file its qualification in the Surrogates's court of this state, it shall file in the office of the clerk of the surrogate's court of the county in which appointment is pending.

(a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing such clerk and his successors its true and lawful attorney; upon whom all process in any action or proceeding against such fiduciary or the acts or defaults of such corporation in reference to such estate, trust or fund may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and (b) a copy of its charter certified by its secretary under its corporate seal, together with the post office address of its principal office;"

and

"provided further that if such foreign corporation proposes to act in any other fiduciary

capacity in the state, it shall file in the office of the superintendent (a) a duly executed instrument in writing, by its terms of indefinite duration, and irrevocable, appointing the superintendent and his successors its true and lawful attorney; upon whom all process in any action or proceeding against such fiduciary affecting or relating to the estate, trust or fund held or represented by such fiduciary or the acts or defaults of such corporation in reference to such estate, trust or fund may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, (b) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent or other person to whom such process shall be forwarded by the superintendent, and (c) a copy of its charter certified by its secretary under its corporate seal, together with the post office address of its principal office."

STATEMENT OF THE CASE

First National Bank of Boston (herein "Boston Bank") was named a party defendant in this class action upon the ground that it conducted banking business in the State of New York and was involved with defendant Teleprompter and other defendants in security transactions violative of the Securities Exchange Act of 1934 (15 U.S.C. §78a *et seq.*), the New York State Statute

(Martin Act) and common law. Jurisdiction was based on §27 of the Securities Exchange Act and pendent jurisdiction. No challenge was presented to sufficiency of the allegations upon which liability against defendants was asserted and upon which recovery was sought. Boston Bank moved to dismiss "on the ground of improper venue" and the motion was granted solely on that basis (Appendix, 1a).

The New York State Banking Law provides (Art. 3, §131, subd. 3) that a non-New York Bank may act as trustee, guardian, executor, administrator or in any other fiduciary capacity under a testamentary writing or trust instrument, or by court appointment, provided similar domestic corporations having the power to act under the law of New York State in such fiduciary capacity are permitted to act in like fiduciary capacity in the state where such foreign corporation is domiciled, and upon condition that such foreign banking corporation file with the Clerk of the Surrogates Court, or in the office of the Superintendent of Banks, as the case may be, a duly executed instrument in writing, of indefinite duration, irrevocably appointing such Clerk or the Superintendent or their successors, its true and lawful attorney upon whom all process in any action or proceeding against such fiduciary affecting or relating to the estate, trust or fund held or represented by such fiduciary, or the acts or defaults of such corporation in reference thereto, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state.

Boston Bank on January 15, 1971, wrote to the State of New York Banking Department:

> "We are enclosing herewith for filing, as required by Section 131(3) of the New York Banking law, the following instruments on behalf of The First National Bank of Boston:
>
> 1. A Power of Attorney executed by The First National Bank of Boston under date of January 15, 1971, designating the Superintendent of Banks of the State of New York or his successor, as agent for service of process, and further designating T. McLean Griffin, Cashier, and his successors in office, as being the appropriate officer to whom process shall be forwarded."

The enclosed Power of Attorney specified that:

> "This Bank desires to transact business in the State of New York in conformity with Section 131(3) of the New York State Banking Law. The First National Bank of Boston hereby constitutes and appoints the Superintendent of Banks, State of New York, and his successors in such office, to be the true and lawful attorney of this Bank in and for the State of New York, upon whom all lawful processes in any action or proceeding against this Bank in New York may be served in like manner and with the same effect as if this Bank existed therein."

The foregoing language did not limit the Superintendent as designee for service of process, specifically as provided in the

statutory language, to "any action or proceeding against such fiduciary [Boston Bank] affecting or relating to the estate, trust or fund held by such fiduciary" or its "acts or defaults" in reference thereto. District Judge MacMahon, although noting that "the language of the designation is broad," held that it "specifically evidences an intent to comply with Section 131(c) of the New York Banking Law" and therefore it did not operate "as a waiver of the venue provision" that a national bank may be sued only in the district in which it is established (12 U.S.C. §94), because the waiver thus narrowly construed did not embrace this lawsuit, which did not fall within the foregoing statutory categories.

The venue provision of the National Bank Act (12 U.S.C. §94) was applied because Boston Bank is established in Boston, Massachusetts and maintains no office, facility, place of business or agent in New York and notwithstanding the undisputed fact that the acts, activities and security transactions in which Boston Bank was involved, participated in, aided and abetted, as alleged in the complaint herein and charged to be in violation of the Securities and Exchange Act, all took place in New York. It is noteworthy in this connection that Boston Bank failed to do what Chase Bank did in *Buffum v. Chase Nat. Bank of City of New York*, 192 F.2d 58 (7 Cir. 1951), which had initially filed a designation authorizing its agent to accept service "in all suits in Illinois," who when replaced by another, the replacement was authorized to accept service "in matters involving the limited purpose" for which Chase Bank "was qualified to do business in Illinois" (p. 61). Nonetheless, Judge MacMahon held that because Boston Bank "is established in Boston, Massachusetts, within the meaning of 12 U.S.C. Section

94," the broad designation filed as aforesaid "is not a waiver of this venue provision" (2a).

The Court of Appeals for the Second Circuit undoubtedly in view of the applicable decisions therein rendered and to which reference is hereinafter made in our discussion of the sharp conflict that exists in the various circuits, affirmed without opinion.

REASONS FOR GRANTING THE WRIT

I.

The widespread and irreconcilable conflict that exists among the Circuits as to whether the limited venue provisions of the National Bank Act of 1864 (12 U.S.C. §94) must yield to the special and properly wide venue provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 should be resolved by this Court.

The sharp conflict that exists and which requires resolution is best demonstrated by the forceful and carefully considered opinions rendered on both sides of the question presented. In *Ronson Corp. v. Liquifin Aktiengesellschaft*, 483 F.2d 852 (3 Cir. 1973), the Court was called upon "to resolve the facially conflicting venue provisions of the National Bank Act and those of the Securities Exchange Act of 1934" and noted that "the narrow provisions of the National Bank Act were enforced by the Court of Appeals of the Second Circuit in *Bruns, Nordeman & Company v. The American National Bank and Trust Company*, 394 F.2d 300 (2d Cir. 1968), *cert. denied*, 393 U.S.

855," and also that "[t]he Ninth Circuit came to the same conclusion in *United States National Bank v. Hill*, 434 F.2d 1019 (9th Cir. 1970)." However, as the opinion indicates:

> "District Courts in this circuit have come to different conclusions, *Rome v. Eltra Corp.*, 297 F. Supp. 314 (E.D. Pa. 1969), following the Second Circuit rulings, and *Levin v. Great Western Sugar Company*, 274 F. Supp. 974 (D.C. N.J. 1967), holding that the venue provisions of the Securities Exchange Act should govern" (p. 854).

The Court of Appeals for the Third Circuit found itself "unable to agree" with the Second and Ninth Circuits and concluded that "neither policy nor statutory construction binds us to the restrictive venue requirements of the National Bank Act which first came into being in 1864." The opinion then effectively sets forth the reasons for the Court's refusal to follow the precedents in the Second and Ninth Circuits:

> "We are guided by the realization that the Securities Exchange Act must be liberally interpreted in order to accomplish the congressional objects of regulating the securities market and of affording proper disclosure to the investing public, as well as preventing fraud in securities trading. In recognition of the national rather than local nature of transactions involved, Congress enlarged the applicable venue and service of process requisites. An unduly narrow

> ruling on venue could not but inhibit and reduce the effectiveness of the remedies provided by the Act" (p. 854).

The opinion then highlights the sharp conflict that exists and specifically treats with the varying views presented:

> "The *Bruns* court thought there had been no intent to carve out an exception to the older National Bank Act limitation because there was nothing in the legislative history of the venue provisions of the Securities Exchange Act which indicated any consideration of the status of national banks. We interpret this lack of specific reference in a different fashion and believe that the failure to mention national banks in this setting implies a congressional intent to include them among those governed by the more liberal standards of the Securities Exchange Act. Indeed we note, as did the court in *Levin v. Great Western Sugar Company, supra,* that when it drafted the Act, Congress was aware that certain portions might be construed as applicable to banks and proceeded to make specific provisions for them. The absence of such an exception in the venue section speaks forcefully for the proposition that the banks also were to be affected by its more expansive sweep.

Further evidence that in the securities field Congress intended the special jurisdiction and

venue section of the Act to be complete and exclusive may be found in the fact that power to hear cases arising under the statute was vested in the federal courts only as contrasted with the Banking Act which allowed litigation in state as well as the United States Courts" (p. 854).

That which immediately follows is likewise illuminating:

> "The *Bruns* opinion referred to the cases of *Mercantile National Bank v. Langdeau,* 371 U.S. 555, 83 S. Ct. 520, 9 L. Ed. 2d 523 (1963), and *Michigan National Bank v. Robertson,* 372 U.S. 591, 83 S. Ct. 914, 9 L. Ed. 2d 961 (1963), which dealt with conflicts between state venue acts and the National Banking Act. But in those discussions the Supreme Court was not considering the effect of the special venue section of the Securities Exchange Act. The differences between the two situations are obvious, and we think that the cases cited are not controlling in the present situation" (pp. 854-5).

The Third Circuit refers to the critical treatises on the same subject:

> "Additionally, we are aware that the limited forum provided by the National Banking Act has been the subject of severe criticism. The American Law Institute, *Study Of The Jurisdiction Between State and Federal Courts*

> (1969), recommends repeal saying 'There is no obvious reason why a national bank requires a unique and restrictive venue rule, and cannot be treated as is any other corporation for purpose of venue.' (pp. 412, 413). See also *An Assault On the Venue Sanctuary of National Banks,* 34 George Washington Law Review 765 (1966)" (p. 855).

The Third Circuit accordingly held "that the special and wide venue provisions of the Securities Exchange Act govern in a factual situation where a national bank is party to the action and therefore the District Court properly refused to dismiss the bank" (p. 855). The "hardships sometimes imposed on plaintiffs as a result of this privilege accorded national banks have caused Section 94 to come under severe criticism" (*Southeast Guar. Tr. Co., Ltd. v. Rodman & Renshaw, Inc.,* 358 F. Supp. 1001, 1005.) Indeed Friendly, J., writing in *Bruns,* discussing the foregoing opinion, stated: "We conclude with regret that the rulings upholding the claim of the prevalence of the 1864 Statute are right" (p. 301), although "[i]f we were writing on a clean slate we would not find it difficult to reconcile §94 of the National Bank Act with §22(a) of the Securities Act" (p. 303).

We need but conclude our analysis of the importance of having the issue here presented finally determined in this Court with the following from the opinion in *Carpenter v. Hall,* 352 F. Supp. 856 (S.D. Texas 1972), which refers to the conflicting decisions and notes that "[t]he precise question presented is still open in the Fifth Circuit, but the Court is of the opinion that when the question is raised" in that Circuit, the "Court of

Appeals will adopt the reasoning in *Levin, supra* [274 F. Supp. 974 D.N.J. 1967], and will hold that the 1934 Act controls" (p. 808). Reference is then made to *Lehigh Va. Trust Co. v. Central Nat. Bank of Jacksonville,* 409 F.2d 989, 993 (5th Cir. 1969), which "confirmed the policy of Congress in enacting Section 10(b) and Rule 10b-5" in order to protect interstate commerce and "to protect and make effective the national banking system and the Federal Reserve System and to insure the maintenance of fair and honest markets in such transactions" (p. 809; 15 U.S.C.A. §78b) and proceeds with the following cogent reasoning:

> "In order to implement and enforce the policies of the 1933 and 1934 Acts, Congress has also seen fit to provide, in Section 22(a) and Section 27, respectively, for nationwide service of process and for venue 'in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated' [Section 22(a)] and 'in any such district ['in the district wherein any act or transaction constituting the violation occurred'] or in the district wherein the defendant is found or is an inhabitant or transacts business' (Section 27). The announced policy of Congress in the 1933 and 1934 Acts is, therefore, to provide a convenient forum for suits involving multi-state frauds, no matter how many states the defendants are citizens of or conduct business in. *Clapp v. Stearns & Co.,* 229 F. Supp. 305, 307

> (S.D.N.Y. 1964). See *Hooper, supra,* 282 F.2d at 201. The jurisdictional and venue provisions of the federal securities laws are the teeth for the enforcement of this important legislation" (pp. 809-810).

And further holds:

> "That 12 U.S.C. §94 does not prevail over the venue provisions of the 1933 and 1934 Acts is also supported by an analysis of the intent of Congress in enacting the former. In *First National Bank of Charlotte, North Carolina v. Morgan,* 132 U.S. 141, 10 S. Ct. 37, 33 L. Ed. 282 (1889), Justice Harlan, speaking for the Court, commented on the Congressional intent in enacting the forerunner of 12 U.S.C. §94, as follows:
>
> '. . . This exemption of national banking associations from suits in state courts, established elsewhere than in the county or city in which such associations were located, was, we do not doubt, prescribed for the convenience of those institutions, and to prevent interruption in their business that might result from their books being sent to distant counties in obedience to process from state courts. *First Nat. Bank of Bethel v. Pahquioque Nat. Bank,* [81 U.S.] 14 Wall. 383, 384 [20 L. Ed. 840, 842]; *Crocker v. Marine Nat. Bank,* 101 Mass. 240.'

> "In 1889, the date of the decision in *First National Bank of Charlotte, North Carolina,* the modern facilities for reproduction and transportation could not have been imagined. Today Xerox-type copy machines are as readily available as typewriters, and no two cities are as much as a half a day apart. Moreover the national impact of securities frauds, a by-product of modern communication technology, was already a major threat when Congress passed the 1933 and 1934 Acts" (p. 810).

It is fair to add that *McClung v. LaSalle National Bank of Chicago, Illinois,* 387 F. Supp. 977, S.D. Iowa, 1975, after referring to the judicial "battle lines drawn on this issue" (p. 979) holds to the contrary.

In today's mobile society with banks so frequently crossing district lines to compete and conduct securities related activities it becomes unjust for the innocent victim damaged by the banks in a Florida securities transaction to travel to Oregon to air his suit (with attorney, records and witnesses). This is precisely what the broad venue provisions of the two Securities Acts was designed to insure against.

It is respectfully submitted that enough appears through the quotations from the foregoing opinion to indicate the need for decisive determination by this Court as to which of the judicial paths so effectively hewed must be followed.

CONCLUSION

Rarely has there been presented such prolonged widespread diversity of judicial opinion, on a subject of such supreme business import, which is reflected in the legal treatises. This precise question of venue recurrently arises with completely different impacts upon the litigants involved, dependent upon that judicial forum in which the lawsuits must be begun. The question here presented, therefore, particularly and forcefully commends itself for ultimate determination by this Court.

Respectfully submitted,

s/ Samuel Gottlieb
s/ Ira Jay Sands
Attorneys for Petitioner

On The Brief:
John A. Pickard

APPENDIX A

OPINION OF THE UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 Civ. 3025 (LFM)

HYMAN RADZANOWER,

Plaintiff,

-against-

TOUCHE, ROSS & CO., et al.,

Defendants.

MacMahon, D.J.:

The within motion, pursuant to Rules 12(b) (2) and (3), Fed. R. Civ. P., for an order dismissing this action as to defendant First National Bank of Boston on the ground of improper venue, is granted.

Absent waiver or consent, a national bank may be sued only in the district in which it is established. 12 U.S.C. Section 94: *Cope v. Anderson*, 331 U.S. 461, 467 (1947); *Klein v. Bower*, 421 F.2d 338, 342 (2d Cir. 1970); *Bruns, Nordeman & Co. v. American Nat'l Bank & Trust Co.*, 394 F.2d 300 (2d Cir.), *cert. denied*, 393 U.S. 855 (1968); *Buffum v. Chase Nat. Bank of City*

Opinion of the United States District Court

of N.Y., 192 F.2d 58 (7th Cir. 1951), *cert. denied*, 342 U.S. 944 (1952). Movant is established in Boston, Massachusetts, within the meaning of 12 U.S.C. Section 94, because its charter specifies Boston as its principal place of business. *Buffum v. Chase Nat. Bank of City of N.Y., supra*, 192 F.2d at 60; *Leonardi v. Chase Nat. Bank of City of N.Y.*, 81 F.2d 19, 22 (2d Cir.), *cert. denied*, 298 U.S. 677 (1936); *Southeast Guaranty Trust Co. v. Rodman & Renshaw, Inc.*, 358 F. Supp. 1001, 1004 (N.D. Ill. 1973); *General Electric Credit Corp. v. James Talcott, Inc.*, 271 F. Supp. 699 (S.D.N.Y. 1966).

Movant's designation of the New York Superintendent of Banks to receive process on its behalf is not a waiver of this venue provision. Although the language of the designation is broad, it specifically evidences an intent to comply with Section 131(c) of the New York Banking Law, which requires such a designation before a foreign bank can operate in a fiduciary capacity in New York. This designation operates as a waiver of the venue provision only in actions involving movant's fiduciary acts in New York, and no such acts are alleged or involved here.

Accordingly, First National Bank of Boston's motion to dismiss this action on the ground of improper venue is granted in all respects.

So ordered.

Dated: New York, N.Y.
October 21, 1974

(Sgd) Lloyd F. MacMahon
United States District Judge

APPENDIX B

JUDGMENT OF THE UNITED STATES COURT OF APPEALS

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

- - - o - - -

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-third day of May, one thousand nine hundred and seventy-five.

PRESENT:

HON. WILLIAM H. MULLIGAN

HON. MURRAY I. GURFEIN
Circuit Judges

HON. MILTON POLLACK
District Judge

Judgment of the United States Court of Appeals

74-2538

Hyman Radzanower,

Plaintiff-Appellant

v.

Touche Ross & Co., Teleprompter Corporation, Jack K. Cooke, Raymond P. Shafer, W.J. Bresnan, B.P. Simon, J.B. Green, L.H. Read, R.G. Wilson, H.E. Flaherty, B.D. Fischman, Berle Adams, Marvin Caron, R.F. Lewis, P.L. Lowe, Charles Luckman, M.B. Mitchell, A.E. Puckett, J.H. Richardson, M.E. Livingston, Jack Wrather, and First National Bank of Boston,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk

By VINCENT A. CARLIN,
Chief Deputy Clerk